



This document is scheduled to be published in the Federal Register on 11/06/2013 and available online at <http://federalregister.gov/a/2013-26579>, and on FDsys.gov

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 153, 155, 156, 157, and 158

CMS-9964-F3

RIN-0938-AR51

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment.

SUMMARY: In the March 11, 2013 issue of the **Federal Register**, we published a final rule entitled, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014”. This correcting amendment corrects several technical and typographical errors identified in the March 11, 2013 final rule.

DATES: This correcting amendment is effective [OFR: Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013-04902 (78 FR 15410), the final rule entitled, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014” there were technical and typographical errors that are identified and corrected in the

regulations text of this correcting amendment. The effective date of the final rule was April 30, 2013.

A. Summary of Errors in the Preamble

On page 15421, in our discussion of factors included in the HHS risk adjustment models, we inadvertently omitted language regarding how an enrollee's age for risk score calculation will be determined.

On page 15493, in our discussion of limiting the definition of cost sharing to Essential Health Benefits, we inadvertently included the incorrect section reference to the Affordable Care Act.

On page 15495, in our discussion of estimating the value of cost-sharing reductions to be provided under the limited cost sharing plan variation open to Indians regardless of household income, we made typographical errors.

On pages 15503 and 15504 in our discussion regarding determining employer size for purposes of participation in the Small Business Health Option Program, we made inadvertent minor errors. On page 15505, in our discussion of the medical loss ratio formula, a phrase was erroneously included.

On page 15506, in our discussion of the technical correction to §158.232(d), we made an inadvertent technical error.

B. Summary of Errors in the Regulations Text

On page 15526, in the regulation text of--

- Section 153.220(c)(2), we inadvertently used the term "if" instead of the term "of," and

- Section 153.230(a), we inadvertently omitted the term “collected” after the phrase “for reinsurance payments from contributions.”

On page 15529, in the regulations text of §153.405(b), we inadvertently omitted references to paragraphs (f) and (g) of this section.

On page 15540, in the regulation text of §158.232(d), we inadvertently used the term “and” instead of the term “an.”

II. Correction of Errors in the Preamble

1. On page 15421, first column, second full paragraph, lines 4 through 10, the sentence “To align with model calibration, an enrollee’s age for risk score calculation will be the age as of the enrollee’s last day of enrollment in a risk adjustment covered plan in the applicable benefit year will be used for enrollees in program operation.” is corrected to read “To align with model calibration, an enrollee’s age for risk score calculation for all enrollment periods will be based on the enrollee’s age in years on the last date of enrollment in the applicable benefit year in any risk adjustment covered plan for the issuer”.

2. On page 15493, third column, fourth full paragraph, line 2, “section 1301(c)” is corrected to read “section 1302(c)(3).”

3. On page 15495, third column, first full paragraph, lines 1 through 15, the sentences “We are finalizing both our proposal for annual rulemaking in the notice of benefits and payment provisions to establish a methodology for advance payments for cost-sharing reductions under the limited cost sharing plan variation, and our proposal of a specific methodology for the 2014 benefit year. As in the case of the other plan variation, we plan to review the methodology for calculating the advance payments once

more data is available, and future notices of benefits and payment parameters may include different methodologies.” is corrected to read “We are finalizing both our proposal for annual rulemaking in the HHS notice of benefit and payment parameters provisions to establish a methodology for advance payments for cost-sharing reductions under the limited cost sharing plan variation, and our proposal of a specific methodology for the 2014 benefit year. As in the case of the other plan variations, we plan to review the methodology for calculating the advance payments once more data is available, and future HHS notices of benefit and payment parameters may include different methodologies.”

4. On page 15503, third column,

a. Second full paragraph, line 10 “IRC” is corrected to read “Code.”

b. Third full paragraph,

(1) Line 6, “IRC” is corrected to read “Code.”

(2) Line 8, “IRC” is corrected to read “Code.”.

5. On page 15504, first column,

a. First full paragraph, line 3, “this Notice” is corrected to read “this final rule”.

b. Second full paragraph, line 3, “IRC” is corrected to read “Code”.

6. On page 15505, second column, last paragraph, lines 1 through 4, the sentence “Issuers must provide rebates to enrollees if their MLRs fall short of the applicable MLR standard for the reporting year.” is corrected to read “Issuers must provide rebates if their MLRs fall short of the applicable MLR standard for the reporting year.”.

7. On page 15506, third column, last paragraph, line 9, the phrase “50 percent – n” is corrected to read “50 percent ^ n”.

8. On page 15540, second column, second paragraph, line 3, the sentence “Beginning with the 2013 MLR reporting year, the credibility adjustment for and MLR based on partially credible experience is zero if both of the following conditions are met:” is corrected to read “Beginning with the 2013 MLR reporting year, the credibility adjustment for an MLR based on partially credible experience is zero if both of the following conditions are met:”

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds there is good cause to do so, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects technical and typographic errors in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014 final rule that was published on March 11, 2013 and became effective on April 30, 2013. The changes are not substantive changes to the standards set forth in the final rule. Therefore, we believe that undertaking further notice and comment procedures

to incorporate these corrections and delay the effective date for these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay when they become effective. For the reasons stated previously, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

List of Subjects

45 CFR Part 153

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

45 CFR Part 158

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, penalties, Reporting and recordkeeping requirements, Premium revenues, Medical loss ratio, Rebating.

As noted in section I of this correcting amendment, the Department of Health and Human Services is making the following correcting amendments to 45 CFR parts 153 and 158.

PART 153 – STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

1. The authority citation continues to read as follows:

Authority: Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

§153.220 [Amended]

2. In § 153.220(c)(2), the phrase “if this section” is removed and the phrase “of this section” is added in its place.

§153.230 [Amended]

3. In § 153.230(a), the phrase “for reinsurance payments from contributions” is removed and the phrase “for reinsurance payments from contributions collected” is added in its place.

§153.405 [Amended]

4. In § 153.405(b), the phrase “(d) or (e) of this section” is removed and the phrase “(d) through (g) of this section” is added in its place.

**PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND
REBATE REQUIREMENTS**

5. The authority citation for part 158 continues to read as follows:

Authority: Section 2718 of the Public Health Service Act (42 U.S.C. 300gg-18,, as amended).

§158.232 [Amended]

6. In § 158.232(d) introductory text, the phrase “adjustment for and” is removed and the phrase “adjustment for an” is added in its place.

Dated: October 30, 2013

Jennifer M. Cannistra,
Executive Secretary to the
Department,
Department of Health and Human
Services.

BILLING CODE 4120-01-P

[FR Doc. 2013-26579 Filed 11/05/2013 at 8:45 am; Publication Date: 11/06/2013]